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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061796
Party	Defendant Kingston Technology Corporation
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Date	05/12/2016
Attachments	KingstonAnsCancl92061796.pdf(36323 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

US Trademark Registration No.: 4,721,431 for HYPERX SKYN
Registered: April 14, 2015

Spansion LLC,)	
)	
Petitioner)	Cancellation No. 92061796
vs.)	
)	
Kingston Technology Corporation,)	(After Answer is Filed, Filings
)	to be Made in Parent File,
)	Opposition No. 91218100)
Registrant)	
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**ANSWER BY KINGSTON TECHNOLOGY CORPORATION TO SECOND
AMENDED PETITION FOR PARTIAL CANCELLATION/LIMITATION**

Kingston Technology Corporation here responds to the Second Amended Petition for Partial Cancellation/Limitation of Spansion LLC filed December 18, 2015.

1. Kingston admits that Spansion markets computer memory chips. Kingston has insufficient knowledge to form a belief as to the factual truth of all other allegations in Paragraph 1 and, therefore, denies all such other allegations.

2. Kingston admits that Spansion markets embedded memory chip packages having a variety of applications. Kingston has insufficient knowledge to form a belief as to the factual truth of all other allegations in Paragraph 2 and, therefore, denies all such other allegations.

3. Kingston has insufficient knowledge to form a belief as to the factual truth of the allegations in Paragraph 3 and, therefore, denies all such allegations.
4. Kingston has insufficient knowledge to form a belief as to the factual truth of the allegations in Paragraph 4 and, therefore, denies all such allegations.
5. Kingston has insufficient knowledge to form a belief as to the factual truth of the allegations in Paragraph 5 and, therefore, denies all such allegations.
6. Kingston admits the allegations of Paragraph 6.
7. Kingston admits the allegations of Paragraph 7.
8. Kingston admits the allegations of Paragraph 8.
9. Kingston admits the allegations of Paragraph 9.
10. Kingston has insufficient knowledge to form a belief as to the basis upon which Spansion counterclaimed and, therefore, denies all such allegations in Paragraph 10. Kingston admits all other allegations of Paragraph 10.
11. Kingston admits the allegations of Paragraph 11.
12. Kingston admits that “hyper” in the electronic industry means better or “more advanced,” or having a “more automatic capability” than other such products and that a “hyper” element is laudatory. Kingston denies each and every other allegation of Paragraph 12.
13. Kingston denies each and every allegation of Paragraph 13.
14. Kingston denies each and every allegation of Paragraph 14.
15. Kingston denies each and every allegation of Paragraph 15.

16. Kingston denies each and every allegation of Paragraph 16.
17. Kingston admits the allegations of Paragraph 17.
18. Kingston denies each and every allegation of Paragraph 18.
19. Kingston denies each and every allegation of Paragraph 19.
20. Kingston denies each and every allegation of Paragraph 20.
21. Kingston has insufficient knowledge to form a belief as to the factual truth of the allegations in Paragraph 21 and, therefore, denies all such allegations.
22. Kingston has insufficient knowledge to form a belief as to the factual truth of the allegations in Paragraph 22 and, therefore, denies all such allegations.
23. Kingston has insufficient knowledge to form a belief as to the factual truth of the allegations in Paragraph 23 and, therefore, denies all such allegations.
24. Kingston denies each and every allegation of Paragraph 24.
25. Kingston incorporates each and every response from Paragraphs 1 through 16 above as if here set forth here in full.
26. Kingston admits the allegations of Paragraph 26.
27. Kingston denies each and every allegation of Paragraph 27.
28. Kingston denies each and every allegation of Paragraph 28.
29. Kingston denies each and every allegation of Paragraph 29.
30. Kingston admits that Spansion denies that the prefix "HYPER" is a merely descriptive terms as applied to electronic and computer goods and that Spansion denies that its mark HYPERRAM is descriptive. Kingston has insufficient knowledge of

the future to form a belief as to the factual truth of all other allegations in Paragraph 30 and, therefore, denies all such other allegations. Kingston further denies any implied legal relevance of all such other allegations of prospective fact in Paragraph 30, the denial being based on *In re Apmco Foods, Inc.*, 227 USPQ 331 (TTAB 1985); *In re Venturi, Inc.*, 197 USPQ 714 (TTAB 1977).

AFFIRMATIVE DEFENSES TO ALL CLAIMS IN OPPOSITION

First Affirmative Defense

1. Spansion has failed to state claims upon which relief can be granted.
2. Spansion denies that the prefix “HYPER” is a merely descriptive term as applied to electronic and computer goods.
3. No prospective order of the Trademark Trial and Appeal Board in Opposition 91218100 would be relevant to the mark “HYPERX” in Application 86/462,159 or in Application 86/418,063, *In re Apmco Foods, Inc.*, 227 USPQ 331 (TTAB 1985); *In re Venturi, Inc.*, 197 USPQ 714 (TTAB 1977).

Second Affirmative Defense

1. Spansion lacks standing to bring this opposition.
2. Spansion is not a competitor of Kingston in the goods listed in the Applications here at issue.
3. Spansion does not use the same lines of commerce as Kingston uses for goods listed in the Applications here at issue.

4. Spansion is not and will not be damaged by use of the marks in the Applications here at issue for the goods listed in the Applications here at issue.

Respectfully submitted,
KINGSTON TECHNOLOGY CORPORATION

Date: May 12, 2016

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this paper is being served upon all parties to this proceeding at the address recorded in the following manner on the date this filing is submitted, May 12, 2016.

By Mail to:

Belinda J. Scrimenti
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/Diane Smith/ [electronic signature]
Diane Smith